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United States
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Foreign
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Office of the General
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Commodity Credit Corporation Regulations

Export Credit Guarantee Program
(GSM-102)
and
Intermediate Export Credit
Guarantee Program
(GSM-103)

United States
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These programs provide means whereby the risk of loss due to nonpayments by foreign banks may be transferred from U.S. exporters (or U.S. financing institutions) to the CCC, and accordingly are intended to:

- (1) facilitate exportation;
- (2) forestall or limit declines in exports;
- (3) permit exporters to meet competition from other countries; and
- (4) increase commercial exports of U.S. agricultural commodities.

Under these programs, the U.S. exporter pays a fee and receives a payment guarantee from CCC. Usually, the exporter will assign the proceeds that may become due under the payment guarantee to a U.S. bank (or other financing institution) which extends credit to finance the export sale.

The U.S. exporter, U.S. bank or other financing institution is then protected by CCC's guarantee in the event of nonpayment by the foreign bank under a letter of credit or related obligation. If the U.S. exporter assigns the proceeds payable under the payment guarantee, the U.S. exporter can usually sell U.S. agricultural commodities to foreign buyers on deferred payment terms and nevertheless receive payment immediately after export.

Information regarding these programs may be obtained from the CCC Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3224 or 447-6225.

August 1987

Summary of Rulemaking

On June 5, 1980, there was published in the Federal Register (45 F.R. 37854) a notice of proposed rulemaking setting forth the proposed terms and conditions for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) regulations. This proposal was adopted and published in the Federal Register as a final rule on October 1, 1980 (45 F.R. 64894).

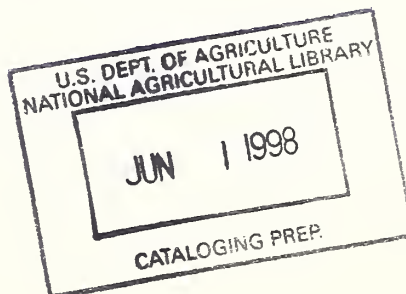
On November 26, 1980, an amendment (amendment number 1) was published as a final rule in the Federal Register (45 F.R. 78622). The CCC Export Credit Guarantee Program (GSM-102) regulations (7 CFR Part 1493 Subpart A) were changed to make it clear that CCC will not, for any actions, omissions or statements made by an exporter over which the assignee has no control, reduce its liability or annul its coverage under a payment guarantee even if an exporter has obtained other coverage for such loss.

On May 5, 1986, there was published in the Federal Register (51 F.R. 16532), a notice of proposed rulemaking whereby the CCC proposed to amend the Export Credit Guarantee Program (GSM-102) regulations (7 CFR Part 1493 Subpart A) to include a new program, the Intermediate Export Credit Guarantee Program (GSM-103). Other changes were also proposed primarily in the interest of greater clarity. This proposal was adopted and published in the Federal Register (51 F.R. 26538) as a final rule (amendment number 2) on July 24, 1986.

On March 19, 1987, there was published in the Federal Register (52 F.R. 8605) a notice of proposed rulemaking to amend the CCC Export Credit Guarantee Program (GSM-102) and the CCC Intermediate Export Credit Guarantee Program (GSM-103) to permit, at CCC's option, freight cost and marine and war risk insurance to be covered by payment guarantees issued under these programs. This proposal was adopted and published in the Federal Register (52 F.R. 17549) as a final rule (amendment number 3) on May 11, 1987.

* * * * *

This issue incorporates amendments number 1 through 3 appearing in the Federal Register on November 26, 1980 (45 F.R. 78622), on July 24, 1986 (51 F.R. 26538), and on May 11, 1987 (52 F.R. 17549).



Title 7 - AGRICULTURE

CHAPTER XIV - COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

Subchapter C - Export Programs

Part 1493 - CCC Export Credit Guarantee Program (GSM-102) and
CCC Intermediate Export Credit Guarantee Program (GSM-103).

Subpart A - Guaranteeing Against Defaults by Foreign Banks

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- 1493.17 OMB Control Number Assigned Pursuant to the Paperwork Reduction Act.

AUTHORITY: Sec. 5(f), Pub. L. 80-89, 62 Stat. 1072, as amended by
Sec. 405(a), Pub. L. 98-623, 98 Stat. 3409 (15 U.S.C. 714c(f)); Sec. 4(b),
Pub. L. 89-808, 80 Stat. 1537, as amended by Sec. 101, Pub. L. 95-501,
92 Stat. 1685 and Sec. 1131, Pub. L. 99-198, 99 Stat. 1486 (7 U.S.C.
1707a(b)); 15 U.S.C. 714b(d).

GENERAL

§1493.1 General Statement

(a) This part contains the regulations governing the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and the CCC Intermediate Export Credit Guarantee Program (GSM-103). Exporters of U.S. agricultural commodities usually require importers to guarantee payment of the selling price of commodities sold to such importers. The guarantee may be in the form of (1) an irrevocable foreign bank letter of credit issued in favor of the exporter under which the foreign bank would make payments as such payments become due; or (2) an irrevocable foreign bank letter of credit in favor of the exporter which is supported by a related obligation under which the foreign bank would make payments as such payments become due. The exporter may assign the account receivable to a U.S. bank or financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment dates, as called for in the export credit sale. GSM-102 and GSM-103 are designed to protect the exporter or the exporter's assignee against loss from defaults due to commercial and noncommercial risks under the foreign bank letter of credit or related obligation. By transferring some of the risk of loss due to defaults by foreign banks from the exporters or their assignees to CCC, GSM-102 and GSM-103 are intended to: facilitate exportation; forestall or limit declines in exports; permit exporters to meet competition from other countries; and increase commercial exports of U.S. agricultural commodities.

(b) GSM-102 and GSM-103 will be administered by the General Sales Manager, Foreign Agricultural Service (FAS), U.S. Department of Agriculture.

(c) The provisions of Public Law 83-664 (Cargo Preference Act) are not applicable to the shipment of commodities covered under GSM-102 and GSM-103.

(d) GSM-102 and GSM-103 may be supplemented by USDA announcements.

§1493.2 Definition of Terms

(a) "Assistant General Sales Manager" means the Assistant General Sales Manager, Export Credits, Foreign Agricultural Service, or designee of the Assistant General Sales Manager.

(b) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(c) "Date of export" means the onboard date of an ocean bill of lading or airway bill or onboard ocean carrier date of an intermodal bill of lading, or if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country.

(d) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the importer under which a firm dollar-and-cent price has been established or a mechanism to establish the price has been agreed upon.

(e) "Eligible interest" means the maximum rate of interest which CCC agrees to pay the exporter, or the exporter's assignee, as indicated in CCC's payment guarantee, including any amendments to the payment guarantee. The payment guarantee may provide for automatic adjustments in the eligible interest during the term of the credit. Eligible interest shall not exceed the average investment rate of the most recent Treasury 52-week bill auction as announced by the Department of Treasury at the time CCC determines the eligible interest or at the time the eligible interest is adjusted.

(f) "Exported value" means the value of the commodity exported under the payment guarantee, f.a.s. or f.o.b. basis point of export, except that "exported value" may, upon approval by CCC, include freight costs for the commodity if the commodity is sold on c & f basis, and freight and marine and war risk insurance cost for the commodity if the commodity is sold on c.i.f. basis.

(g) "Exporter" means an individual, group of individuals, partnership, corporation, association, cooperative, or any other entity that is:

(1) financially responsible; (2) engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States; and (3) not suspended or debarred from contracting with or participating in any program administered by CCC on the date of issuance of the payment guarantee.

(h) "FAS" means the Foreign Agricultural Service, U.S. Department of Agriculture.

(i) "Foreign bank letter of credit" means: (1) an irrevocable commercial letter of credit providing for deferred payments and issued in favor of the exporter by a CCC-approved banking institution pursuant to an export credit sale requiring payment in U.S. dollars; or (2) an irrevocable commercial letter of credit issued in favor of the exporter by a CCC-approved banking institution pursuant to an export credit sales requiring payment in U.S. dollars, which is supported by a related obligation providing for deferred payment in U.S. dollars from the banking institution issuing the letter of credit to a financial institution in the United States.

(j) "GSM-102" means the program under this subpart, also referred to as the "Export Credit Guarantee Program", under which the payment guarantees issued are for a period not exceeding 3 years from the date of export.

(k) "GSM-103" means the program under this subpart, also referred to as the "Intermediate Export Credit Guarantee Program", under which the payment guarantees issued are for a period exceeding 3 years but not exceeding 10 years from the date of export.

(l) "Guaranteed value" means the maximum amount CCC agrees to pay the exporter under CCC's payment guarantee, exclusive of interest. The guaranteed value will be shown in the payment guarantee.

(m) "Importer" means a foreign buyer who enters into an export credit sales contract with a U.S. exporter, or with an intervening purchaser, providing for shipment directly from the United States to the foreign buyer.

(n) "Payment guarantee" means the written agreement under which CCC undertakes to protect the exporter or the exporter's assignee from losses due to nonpayment by a foreign bank under the foreign bank's letter of credit supporting the exporter's export credit sales contract or under the foreign bank's obligation owed to the exporter or the exporter's assignee related to the foreign bank's letter of credit issued in favor of the U.S. exporter.

(o) "Port value" means the total value of the export credit sale, less any discounts or allowances, f.a.s. or f.o.b. basis at U.S. points of export. Port value may, upon approval by CCC, include freight costs for the commodity if the export credit sale is made c & f basis, less any discounts or allowances, and freight and marine and war risk insurance for the commodity if the commodity is sold on c.i.f. basis, less any discounts or allowances. Such values shall include the amount of the upward loading tolerance, if any, as provided for by the export credit sales contract.

(p) "USDA announcement" means an announcement issued by the U.S. Department of Agriculture supplementing these regulations. An announcement may include identification of eligible agricultural commodities and countries, dollar limitation of CCC exposure in a country and other information.

GUARANTEE AGAINST DEFAULTS

§1493.3 Application for Payment Guarantee

(a) An exporter shall submit a written application (e.g., letter, telex, or TWX) for a payment guarantee to the USDA office specified in §1493.15 requesting coverage under GSM-102, if the credit terms are three years or less, or GSM-103, if the credit terms are more than three years but not more than 10 years. An application may be made by telephone but, if so made, it must be confirmed in writing. An application shall include the full business name and address of the exporter and the following:

- (1) Name of the destination country.
- (2) Name and address of importer.
- (3) Intervening purchaser, if any, and a statement that the commodity will be shipped directly to the foreign importer in the destination country.
- (4) Date of sale.
- (5) Exporter's sale number.
- (6) Delivery period.
- (7) Kind and description of the commodity.
- (8) Quantity.
- (9) Contract loading tolerance.
- (10) Port value, including upward loading tolerance.
- (11) Guaranteed value.
- (12) Guarantee fee.
- (13) The name and address of the foreign bank issuing the letter of credit.
- (14) Estimated payment schedule for each shipment to be made under the export credit sale showing estimated principal payment due dates and amounts due.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications, or rejected by the Assistant General Sales Manager. In the event the application is approved, the Assistant General Sales Manager shall cause a payment guarantee to be issued in favor of the U.S. exporter.

§1493.4 Payment Guarantee

(a) The payment guarantee shall provide that CCC will pay the U.S. exporter or the exporter's assignee in U.S. dollars for losses resulting from the failure of the foreign bank which issues the bank letter of credit securing the export credit sale to honor drafts drawn upon it or otherwise to remit amounts properly due the exporter or the exporter's assignee.

(b) The payment guarantee shall become effective on the date(s) of export(s) of the agricultural commodities sold by the exporter to the importer and continue in force with respect to payments due during the period specified in the payment guarantee or amendment thereof but in any event not exceeding (i) 36 months for credits covered by GSM-102 and (ii) 120 months for credits covered by GSM-103, from the date(s) of such export(s). Exports made prior to receipt by CCC of a telephonic or written application for a payment guarantee or exports made after the final date for export shown on the payment guarantee or amendment thereof are ineligible for GSM-102 or GSM-103 coverage, except where it is determined by the Assistant General Sales Manager to be in the interest of CCC.

(c) The payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the Assistant General Sales Manager.

(d) The payment guarantee may be amended by the parties thereto, provided that such amendment is in conformity with GSM-102 and GSM-103 at the

time the amendment is approved. Amendments may include a change in the credit period or an extension of time to export. Any amendment to the payment guarantee may be subject to an increase in the guarantee fee. The assignee may submit corrections to the payment schedule.

(e) The assignee shall not be a branch, agency or the home office of the foreign bank issuing the letter of credit.

GUARANTEE RATES AND FEES

§1493.5 Guarantee Rates

The payment guarantee rates will be based upon the length of the payment terms provided by the export credit sale contract, the degree of risk that CCC assumes as determined by CCC, and any other factors which CCC believes should be considered. Guarantee rates charged by CCC under GSM-102 and GSM-103 will be available upon request from the USDA office specified in section 1493.15.

§1493.6 Guarantee Fee

(a) The guarantee fee will be computed on the basis of the guarantee rate and the guaranteed value.

(b) The exporter shall remit, with his written application (e.g., letter, or TWX), the full amount of the fee. If the application is submitted by telephone, final approval will not be given until the fee and a written application have been received by CCC. Approval of the application will be final and refund of the guarantee fee will not be made after approval unless the Assistant General Sales Manager determines that such a refund will be in the interest of Commodity Credit Corporation.

(c) If the application for a payment guarantee is not approved or is approved only for a part of the coverage requested, a full or pro rata refund of the remittance will be made. The guarantee fee shall be made payable to CCC and mailed to the office specified in §1493.15.

DOCUMENTS REQUIRED AFTER EXPORT

§1493.7 Evidence of Export

(a) The exporter shall provide a written report to the office specified in §1493.15 within 30 calendar days following each export covered under the payment guarantee. This report shall include the following:

- (1) Payment guarantee number.
- (2) Date of export.
- (3) Exporter's sale number.
- (4) Exported value.
- (5) Kind, quantity, and description of the commodity exported.

(6) Statement that the agricultural commodities of the grade, quality, and quantity called for in the exporter's sales contract with the foreign importer have been exported to the country specified in the payment guarantee.

(7) A statement that the exporter has documents evidencing the obligation of the foreign importer and that such documents will be retained until three years after the final installment due date as called for in the payment guarantee.

(8) A statement that a letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported.

(9) A final payment schedule showing the payment due dates and the amounts due, separately for both the principal and the interest for which credit has been extended to the importer. If the interest to be paid is based on a variable rate, estimated interest amounts may be shown.

(b) If the report required by paragraph (a) of this section is not received by CCC within 30 calendar days after the date of the export, the payment guarantee shall become null and void with respect to defaults in

payment applicable to such export. This provision may be waived by the Assistant General Sales Manager, if it is determined to be in the interest of CCC.

LOSSES CAUSED BY DEFAULTS

§1493.8 Notice of Default

(a) If the foreign bank issuing the letter of credit fails to make a remittance pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee shall notify CCC at the address indicated in §1493.11(b) by phone or wire as soon as possible, but not later than 10 calendar days, after the due date, or any extension thereof by the Treasurer, or Assistant Treasurer, CCC, in order to file a claim for that payment in accordance with paragraph (b) of this section. If made by phone it must be confirmed in writing. The notice shall include the payment guarantee number, the amount due, the date of refusal to pay and reason for failure to pay, if known.

(b) Within 30 days after the notice of default, or any extension thereof by the Treasurer, or Assistant Treasurer, CCC, the exporter or the exporter's assignee shall file a claim for loss to the Treasurer, CCC, with the following information and documents:

- (1) Payment guarantee number.
- (2) A certification that the scheduled payment has not been received.
- (3) A copy, certified as true and correct by the exporter or the exporter's assignee, of each of the following:
 - (i) Foreign bank letter of credit securing the export credit sale and, if applicable, the obligation owed by the foreign bank to the assignee U.S. bank which is related to the foreign bank's letter of credit issued in favor of the exporter.

- (ii) Ocean carrier or intermodal bill(s) of lading with onboard ocean carrier date for each shipment, or airway bill, or if exported by rail or truck, landing certificate or similar document.
- (iii) Invoice(s) showing the exported value. If there is an intervening purchaser, both the exporter's invoice to the intervening purchaser and the invoice to the foreign buyer should be included.
- (iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC their respective rights for the amount of payment in default under the applicable export credit sale.

(c) A claim for a loss by the exporter or the exporter's assignee shall not be honored if it is made later than six months from the date of default.

§1493.9 Payment of Loss

(a) Upon receipt of the information and documents in good order, as required under §1493.8, CCC shall determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee and these regulations. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will remit to the exporter or the exporter's assignee the amount of the combined principal and interest loss covered by the payment guarantee plus interest at the latest average investment rate of the most recent Treasury 52-week bill auction as announced by the Department of Treasury as of the date of default. Interest shall accrue beginning with the first day after the exporter's or the exporter's assignee's claim was received by CCC and continuing to the date payment is made by CCC.

(b) CCC's maximum liability will be limited to the lesser of
(1) the guaranteed value as shown in the payment guarantee plus eligible interest or (2) the percentage of the exported value as specified in the payment guarantee plus eligible interest.

(c) CCC shall only honor claims for losses on amounts not paid as scheduled. CCC shall not honor claims for amounts due under an accelerated payment clause in the export credit sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. bank which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the interest of CCC by the Assistant General Sales Manager. Notwithstanding the foregoing, CCC, at its option may declare the entire amount of the unpaid balance plus accrued interest in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(d) Notwithstanding any other provision of the regulations set forth in this subpart to the contrary, with regard to commodities exported to which the payment guarantee is applicable, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter over which the assignee has no control provided that: (1) the exporter complies with the reporting requirements under §1493.7 and (2) the exporter or the exporter's assignee furnishes the statements and documents specified in §1493.8.

§1493.10 Recovery of Losses

(a) Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer and/or the foreign bank of CCC's rights under the subrogation agreement to recover all monies in default.

(b) In the event monies for the defaulted payment are received by the exporter or the exporter's assignee from the importer, foreign bank or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC.

(c) Recoveries made by CCC from the importer or foreign bank and recoveries received by CCC from the exporter or the exporter's assignee or any other source shall be allocated by CCC to the exporter or the exporter's assignee and CCC on a pro rata basis as their respective interest may appear. The respective interest of each party shall be determined on a pro rata basis, based on the combined amount of principal, plus interest.

(d) Notwithstanding any other terms of the payment guarantee, the exporter shall be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or in fulfilling obligations under GSM-102 or GSM-103, and the exporter's assignee shall be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has not fulfilled any of the assignee's obligations under GSM-102 or GSM-103.

(e) Upon payment of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee shall cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

MISCELLANEOUS PROVISIONS

§1493.11 Assignment

(a) The exporter may make an assignment of the proceeds payable by CCC under the payment guarantee or the rights thereto only to a bank or other financing institution in the United States. The assignment shall cover all

amounts payable under the payment guarantee not already paid and shall not be made to more than one party, and shall not be subject to further assignment, unless approved in advance by CCC. Any such assignment may be made to one party as agent or trustee for two or more parties participating in the financing.

(b) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(c) Receipt of the notice of assignment shall be acknowledged by an officer of CCC.

§1493.12 Covenant Against Contingent Fees

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the payment guarantee or that there is any agreement or understanding for commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this or other obligations or warranties undertaken by the exporter in regard to a GSM-102 or GSM-103 payment guarantee, CCC shall have the right, notwithstanding other rights provided under these regulations, to annul coverage for any commodities not yet exported and/or to proceed against the exporter.

§1493.13 Officials Not to Benefit

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

§1493.14 Exporter's Records and Accounts

Authorized officials of USDA shall have access to and the rights to examine any pertinent books, documents, papers, and records of the exporter and/or the exporter's assignee involving transactions related to the export credit sale covered by the payment guarantee until three years after expiration of the coverage of the payment guarantee.

§1493.15 Communications

Unless otherwise provided, written requests, notifications, or communications concerning the payment guarantee shall be addressed to the Assistant General Sales Manager, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250.

§1493.16 Alternative Satisfaction of Payment Guarantees

CCC may, upon agreement of the exporter (or if the proceeds payable under the payment guarantee have been properly assigned, then the exporter's assignee), establish procedures, terms and conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms and conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more for an obligation than the amount of CCC's obligation.

§1493.17 OMB Control Number Assigned Pursuant to the Paperwork Reduction Act

The information collection requirements contained in this regulation (7 CFR Part 1493, Subpart A) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0004.

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